

RECEIVED

BEFORE THE TENNESSEE REGULATORY AUTHORITY

2004 MAY 21 PM 6: 22

NASHVILLE, TENNESSEE

T.R.A. DOCKET ROOM

IN RE:

UNITED CITIES GAS COMPANY, a
Division of ATMOS ENERGY
CORPORATION, INCENTIVE PLAN
ACCOUNT (IPA) AUDIT

UNITED CITIES GAS COMPANY, a
Division of ATMOS ENERGY
CORPORATION, PETITION TO
AMEND THE PERFORMANCE BASED
RATEMAKING MECHANISM RIDER

DOCKET NO.
01-00704

STAFF'S RESPONSES TO
THE CONSUMER ADVOCATE'S MOTION FOR RELIEF UNDER
RULE 37.02 OF THE TENNESSEE RULES OF CIVIL PROCEDURE
AND TO
THE CONSUMER ADVOCATE'S OBJECTIONS TO THE MOTION FOR APPROVAL
OF SETTLEMENT AGREEMENT FILED BY ATMOS ENERGY CORPORATION
AND THE STAFF OF THE TENNESSEE REGULATORY AUTHORITY

The Staff of the Energy and Water Division of the Tennessee Regulatory Authority ("Staff") hereby submit the following responses to the *Consumer Advocate's Motion for Relief Under Rule 37.02 of the Tennessee Rules of Civil Procedure* ("Motion for Relief") filed by the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") on May 13, 2004 and to the *Consumer Advocate's Objections to the Motion for Approval of Settlement Agreement Filed by Atmos Energy Corporation and the Staff of the Tennessee Regulatory Authority* ("Objections") filed by the Consumer Advocate on May 17, 2004.

I. REGARDING THE *MOTION FOR RELIEF*

The Consumer Advocate continues to insist that the “grounds cited in the motion for approval of the settlement” must include “the standard the TRA should apply to determine if the [*Motion to Consolidate and for Approval of Settlement Agreement* (“*Settlement Agreement*”)] should be granted.” At the same time, the Consumer Advocate claims to understand the concept of “listing facts to support the motion.”¹ To the extent that the Consumer Advocate continues to argue that facts offered in support of a motion, (i.e., grounds in support of a motion) are synonymous with a legal standard to be applied during the evaluation of facts offered to support a motion, the Consumer Advocate’s argument must be rejected.

The Consumer Advocate correctly points out that the “discovery rules allow parties to explore the contentions and positions of the other parties”² and insists that Staff must now answer additional contention discovery “including a clearly articulated standard for review”³ of the *Settlement Agreement*. However, such discovery has never been propounded on Staff.

Interrogatory Number 1 of the Consumer Advocate’s *Attorney General’s Interrogatories to the Tennessee Regulatory Authority Staff* does not ask about any Staff contention. Rather, it

¹ *Motion for Relief*, p. 2 (May 13, 2004). In footnote 1 to its *Motion for Relief* the Consumer Advocate further demonstrates its confusion regarding the term “grounds” by referencing “an entire section” of its motion to compel “where the standard for granting the motion is discussed” which was, curiously, not listed, or even referenced, in that portion of its motion to compel entitled “grounds supporting motion.”

² *Motion for Relief*, p. 2 (May 13, 2004).

³ *Motion for Relief*, p. 3 (May 13, 2004).

restates a particular contention and asks for a listing of facts supporting the contention.⁴ Additional contention discovery at this point would be untimely.⁵

The Consumer Advocate claims in its *Motion for Relief* to have been prejudiced by what the Consumer Advocate characterizes as Staff's "failure to affirm (or specifically distinguish) the standard set out in its motion requesting that the proposed settlement be approved."⁶ The Consumer Advocate fails, however, to identify the nature of the prejudice in its *Motion for Relief*.

It was only after reviewing the Consumer Advocate's *Objections* that Staff was able to determine the nature of the claimed prejudice. In its *Objections* the Consumer Advocate alleges that Staff has attempted an improper "shifting of the burden of proof clearly outlined in Tennessee Code Annotated §§ 65-4-117, 65-5-201 and 65-5-203."⁷ The Consumer Advocate states in a footnote to its *Objections* that it "is requesting that it be allowed to file a reply if it has the burden of proof, particularly given the disputes between the parties about the applicable standard."⁸

The Consumer Advocate identifies (in its *Objections*) Tenn. Code Ann. §§ 65-4-117, 65-5-201 and 65-5-203 as the statutes which "set out" the "rigors of process and standards" applicable

⁴ Interrogatory Number 1 states: "State each fact you rely on to support your contention that the proposed settlement agreement is necessary and proper for the public convenience and properly serves the public interest." See *Attorney General's Interrogatories to the Tennessee Regulatory Authority Staff*, p. 5 [page four of the document] (April 30, 2004). The fact that the Consumer Advocate knew what it was asking for with this Interrogatory is demonstrated by its May 4, 2004 letter stating "I have your objections. How about answering our discovery as soon as possible in light of your reasons for asserting that the proposed settlement should be approved? If there is disagreement about the standard, this can be cleared up later. Thanks." An unsigned copy of the letter which was received in electronic format is attached as Exhibit A to these responses.

⁵ As a result of discussions relating to Interrogatory Number 1 during the May 10, 2004 status conference, Staff was ordered by the Hearing Officer to "address the applicable standard upon which they intend to rely for approval of the settlement agreement and for approval of the amendment to the tariff." See *Order Amending Procedural Schedule*, p. 3 (May 13, 2004). Staff has complied with this order.

⁶ *Motion for Relief*, p. 3 (May 13, 2004).

⁷ *Objections*, p. 8 (May 17, 2004).

⁸ *Objections*, p. 3 n.2 (May 17, 2004).

to the *Settlement Agreement*.⁹ The Consumer Advocate also points to these same statutes as “clearly” outlining the burden of proof that Staff must meet to prevail in this matter.¹⁰ Contrary to the Consumer Advocate’s above-referenced claim of a dispute regarding the standard applicable to Staff’s motion (that, if approved, will have the effect of amending a tariff) Staff has identified Tenn. Code Ann. §§ 65-4-117 and 65-5-203 as mandating “the applicable legal standard for Authority approval of a proposed amendment to a tariff.”¹¹

Staff has never suggested that it does not bear the burden of proof and has in fact affirmed the burden of proof and who bears it on the record. The burden of proof has not been shifted and therefore the Consumer Advocate’s claimed prejudice does not exist. Given that the Consumer Advocate has not been prejudiced, the Hearing Officer should deny the *Motion for Relief*.

As a final matter, Staff must directly address the unfortunate accusations made by the Consumer Advocate that Staff has indicated the intent to “disregard, through misdirection”,¹² to refuse to follow,¹³ and to otherwise ignore¹⁴ the directives of the Hearing Officer stemming from the Hearing Officer’s rulings of May 10, 2004 regarding the standards applicable to this matter. At the time Staff supplemented its discovery responses the *Order Amending Procedural Schedule* had not yet issued. Staff therefore relied on the Hearing Officer’s directives recounted in the transcript of the May 10, 2004 hearing as follows:

Hearing Officer: Based upon what I've heard today, what I would like to do is order Staff, since we're on that interrogatory, to file a supplemental response to identify what standard they're relying upon.

Staff Counsel: Just a question of clarification. Is the standard that you are asking for the standard for approval of a settlement agreement in the generic sense or for

⁹ *Objections*, p. 8 (May 17, 2004).

¹⁰ *Objections*, p. 8 (May 17, 2004).

¹¹ *Supplemental Responses to Attorney General's Interrogatories and Requests for Production Served on the Tennessee Regulatory Authority Staff*, p. 2 (May 11, 2004)

¹² *Motion for Relief*, p. 1 (May 13, 2004)

¹³ *Motion for Relief*, p. 2 (May 13, 2004)

¹⁴ *Motion for Relief*, p. 3 (May 13, 2004).

approval of an amendment to a tariff? Or does the hearing officer consider them one and the same?

Hearing Officer: To the extent that the settlement agreement encompasses the amendment to the tariff, then I guess both, actually.

Staff Counsel: We'll file our response.

Hearing Officer: Okay. Thank you.

Based upon the above-referenced exchange between the Hearing Officer and Counsel for Staff, Staff submitted its supplemental responses identifying the legal standards upon which Staff is relying. This was done in the relatively short timeframe agreed to by Staff and ordered by the Hearing Officer. That this was apparently not done to the satisfaction of the Consumer Advocate does not warrant an accusation of an attempt to disregard, a refusal to follow, or an attempt to ignore the Hearing Officer's directives of May 10, 2004. Likewise, the Consumer Advocate's late-arising desire for irrelevant contention discovery does not warrant modifying the procedural schedule to allow for such discovery. Therefore, the *Consumer Advocate's Motion for Relief Under Rule 37.02 of the Tennessee Rules of Civil Procedure* should be denied.

II. REGARDING THE OBJECTIONS

The Consumer Advocate's *Objections* identifies several procedural objections, identified by the Consumer Advocate as "*threshold* objections," and several substantive objections, identified by the Consumer Advocate as "specific objections." The substantive portions of the Consumer Advocate's *Objections* represent the first time the Consumer Advocate has stated on the record the nature of its objections to amending the Performance Based Ratemaking Mechanism Rider ("PBR"). To the extent practicable, Staff addresses below these procedural and substantive objections in the same order in which they were presented by the Consumer Advocate's *Objections*.

A. THE CONSUMER ADVOCATE'S PROCEDURAL OBJECTIONS

1. The Settlement Agreement between Staff and Atmos Energy Corporation.

With its first objection, the Consumer Advocate correctly illustrates that a settlement may not be imposed upon a party to a dispute who has not joined in such a settlement. However, the Consumer Advocate incorrectly implies that such an imposition has taken place in this docket. Ironically, in the very document which constitutes a part of the procedural process allowing the Consumer Advocate to state, on the record and in the open, its objections to the effects of approving the settlement, the Consumer Advocate characterizes the settlement as a “giveaway struck behind closed doors.”¹⁵ The unfortunate accusation that a settlement is being sought in a manner that avoids public scrutiny, Authority review, or challenge by the Consumer Advocate is contrary to the record in this docket which includes the public filing of the proposed settlement, an explanation of the effect of the approval of the settlement, and now, finally, substantive objections from the Consumer Advocate to approval of the proposed settlement. There is no imposition here.

The Consumer Advocate incorrectly states that the examples of settlement agreements filed by Staff together as part of its supplemental responses identifying the legal standard upon which Staff is relying for approval of the proposed amendment to the PBR and the other proposals set forth in the *Settlement Agreement* have only two (2) things in common. There are more.

For example, these settlement agreements contain no express articulation of the applicable legal standard that the Authority should employ when considering them for approval. Yet these settlement agreements were nevertheless approved, in whole or in part. Obviously these settlement agreements also share the common trait of having had a legal standard for approval applied to them prior to such approval. These settlement agreements also share the common trait

¹⁵ *Objections*, p 5 (May 17, 2004)

of having the same legal standard for approval applied to each prior to approval (for there can be only one such standard). But the most important trait these settlement agreements share is that the Consumer Advocate was a party to each agreement and therefore intimately aware of the legal standard applicable to both. It is precisely this awareness of the applicable standard(s) for the approval of settlement agreements, and the substantive effects of approval of the proposals contained in such settlement agreements, that should negate further consideration of the Consumer Advocate's continued insistence that Staff must do more to identify the legal standard(s) applicable to the issues in this docket.

The fact that the Consumer Advocate has declined to support the proposals contained in the *Settlement Agreement* does not amount to a denial of the opportunity for the Consumer Advocate to challenge the proposals contained in the *Settlement Agreement*. In fact, the Consumer Advocate's ability to file its *Objections* demonstrate that the "imposition" it complains of has not, and will not, happened.

To understand this point clearly all one need do is imagine what would happen if the *Settlement Agreement* signaling the resolution of issues between Staff and the Company had not been filed and, instead, the Company's petition to amend the PBR were considered in a context where two parties support the petition and one party opposes the petition. One could imagine that in such a context there would be: a proposal for changes to the tariff filed; the opportunity for discovery related to the proposed changes; the opportunity for the filing of objections to the proposed changes; and a public hearing regarding the proposed changes.

A public hearing in this matter is presently scheduled for June 8, 2004. Despite the filing of the *Settlement Agreement*, the Consumer Advocate has had the opportunity for discovery, the opportunity to file objections, and presently has the opportunity to participate in the June 8

hearing. Parties to a docket are free to signal the resolution of issues between them in the form of a settlement agreement and offer up the proposals contained within the settlement agreement for consideration by the Authority and for objections to the proposals contained within the settlement agreement by parties who have not joined in the settlement agreement. This docket is providing just such a process. Again, there is no imposition here.

2. Effects of Mediation Participation Upon the Consumer Advocate

The Consumer Advocate complains that because of its prior participation in the mediation of this case “the opportunity for discovery and hearing on the merits . . . could be taken away over the Consumer Advocate’s objection.”¹⁶ As noted above, the Consumer Advocate has clearly had the opportunity for discovery and presently has the opportunity to participate in the hearing on the merits scheduled for June 8, 2004. The Consumer Advocate continues to complain that it needs still more discovery but does not elaborate as to what types of additional discovery the Consumer Advocate seeks. At a minimum, given that the Consumer Advocate has already been afforded ample opportunity to conduct discovery in these consolidated dockets, the Consumer Advocate should be required to file a separate motion specifically identifying the discovery it claims remains outstanding (preferably attaching copies of the additional interrogatories and requests for production it claims to have been prevented from presenting earlier) together with an explanation as to why it has not previously filed such discovery.

3. Effects of Participation in a Judicial Settlement Conference Upon the Consumer Advocate

The Consumer Advocate claims the same injury as identified in its complaints regarding its participation in mediation to the extent that the mediation may have also been a judicial

¹⁶ *Objections*, p. 7 (May 17, 2004).

settlement conference. In response Staff refers to its comments above regarding the effects of the Consumer Advocate's participation in the mediation.

4. The Burden of Proof

The Consumer Advocate suggests that the Authority's consideration of the proposals set forth in the *Settlement Agreement* operates to improperly shift the burden of proof to the Consumer Advocate to establish that the *Settlement Agreement* is not in the public interest. As noted above in Staff's discussion of the Consumer Advocate's *Motion for Relief*, Staff has acknowledged its burden of proof on the record and, through this filing, does so again. The Consumer Advocate correctly states that it should not be required to disprove that the *Settlement Agreement* is in the public interest. However, the Consumer Advocate should be required to demonstrate the merits of its objections. If the Authority finds that the Consumer Advocate's objections have no merit, and if the Authority finds that Staff and the Company have made the requisite showing of facts to support the proposals contained in the *Settlement Agreement*, then the *Settlement Agreement* should be approved.

5. Retroactive Ratemaking

The issue of retroactive ratemaking is not relevant to this case for several reasons: (1) any adjustments which result from application of the incentive plan will be applied prospectively; (2) the prohibition against retroactive ratemaking applies only in the context of establishing a base rate and does not apply to surcharge proceedings such as these whereby a company seeks to retain a portion of savings which were achieved through voluntary efforts on its part—we are not "making rates", therefore a prohibition against "making rates" retroactively does not apply; and (3) an incentive plan (including most of the components of the PBR) is, by design, retroactive in

its operation. However, the retroactive nature of the plan does not render it an unlawful, retroactive ratemaking.

The Tennessee Court of Appeals has held that sharing excess earnings through prospective rate reductions does not constitute retroactive ratemaking where such actions do not require refunds to customers and do not provide for rates to be adjusted retroactively.¹⁷ In this case the operation of the PBR, as it is currently structured or inclusive of the proposed amendment, does not result in customer refunds. In fact, customers receive the benefit of their share of any savings accomplished by the company immediately under the plan. The company only recoups its share of any savings through prospective rate adjustments.

The proceedings at issue in this case do not implicate or affect the base rate established in Atmos' tariff. At the conclusion of this case and regardless of the outcome, the base rate will remain the same. The principle of retroactive ratemaking applies to base rate proceedings and not to surcharge proceedings such as this.¹⁸

An incentive plan is inherently retroactive to the extent that it relies on historical data which is audited to produce numbers which in turn produce economic consequences. However, this comes as no surprise and is fairly noticed to the company and its customers ahead of time by virtue of the Authority's approval of the incentive plan. If one carries the Consumer Advocate's objection to its logical conclusion, then the entire incentive plan would have to be discarded on the basis that it amounts to retroactive ratemaking. Even the Consumer Advocate should concede that incentive mechanisms are commonplace in the industry. Thus, because the

¹⁷ See *American Association of Retired Persons v Tennessee Public Service Commission*, 896 S.W.2d 127, 134 (Tenn Ct App 1994)

¹⁸ See *UGI Utilities, Inc v Pennsylvania Utility Commission*, 677 A.2d 882, 887 (Pa Cmwltth 1996) (additional citing references omitted).

incentive plan, while retroactive in some respects, does not amount to a ratemaking proceeding the concept of retroactive ratemaking simply is not applicable.

In its *Objections* and subsequent to its discussion of retroactive ratemaking, the Consumer Advocate makes a reference to “after the fact conversations with the Staff.”¹⁹ Staff is forced to speculate that this refers to the dispute between Staff and the Company which arose in Docket No. 01-00704 regarding Staff’s Audit for the 2000-2001 plan year under the current PBR. If the Authority approves the *Settlement Agreement*, all disputes between the parties, including the Consumer Advocate, in Docket No. 01-00704 will be resolved by virtue of the fact that the Company will have withdrawn its objection to the Audit’s findings and thereby met the demands of the Staff, and the Consumer Advocate, in that case.

B. THE CONSUMER ADVOCATE’S SUBSTANTIVE OBJECTIONS

For ease of reference Staff addresses the Consumer Advocate’s substantive objections contained in the seventeen (17) enumerated paragraphs beginning on page nine of its *Objections* in the same format as used by the Consumer Advocate.

1. Here the Consumer Advocate reiterates its contention that approval of the *Settlement Agreement* would amount to retroactive ratemaking. In reply, Staff refers to its responses above regarding retroactive ratemaking.

2. Here the Consumer Advocate erects the false premise that Staff and Atmos must prove that the “Authority approved the use of negotiated transportation ‘savings’ in administering the PBR Plan” in its current form. In doing so the Consumer Advocate stubbornly refuses to acknowledge that upon approval of the *Settlement Agreement*, Staff, and the Consumer Advocate, get exactly what they want regarding the heart of the issue in Docket No. 01-00704:

¹⁹ *Objections*, p 9 (May 17, 2004).

vindication of Staff's Audit of the 2000-2001 plan year through the withdrawal of Atmos' objections to the Audit and the refund of approximately \$630,000 to Atmos' customers.

3. The Consumer Advocate states that Staff should be required to explain the various findings in the Federal Energy Regulatory Commission's ("FERC") order of July 25, 2003 entitled *Modification of Negotiated Rate Policy, Natural Gas Pipeline Negotiated Rate Policies*. Staff's review of this order has revealed that it focuses on a pricing mechanism that is not at issue in this docket: basis differential pricing. Basis differential pricing results from the practice of comparing the difference in the cost of gas at various points along a pipeline. None of the contracts implicated in this docket utilize basis differential pricing. Rather, Atmos' contracts are priced with reference to the maximum FERC rate as explained in the materials filed with the *Settlement Agreement*. These discounted transportation contracts simply are not addressed by the FERC order. It is for this reason that Staff maintains that the FERC order is irrelevant.

4. The Consumer Advocate argues here that the *Settlement Agreement* somehow allows Atmos to take \$750,000 annually "from the pockets of its customers."²⁰ Staff is uncertain where the Consumer Advocate calculated the \$750,000 figure since there was no further explanation provided. However, under the terms of the *Settlement Agreement*, in order for Atmos to receive \$750,000 in savings from transportation contracts, the customers of Atmos would receive approximately \$850,000 in savings. In addition, the Consumer Advocate's argument assumes that these savings would have occurred whether or not there was an incentive mechanism in place. The remaining statements relating to Staff's reasons for intervening in Docket No. 02-00850 are inaccurate and irrelevant.

5. The Consumer Advocate argues here that the *Settlement Agreement* gives nothing of value to Atmos' customers. Just the opposite is true. As noted above and using the Consumer

²⁰ *Objections*, p. 10 (May 17, 2004).

Advocate's own figures, Atmos' customers would receive approximately \$850,000 in shared savings. The Consumer Advocate then goes on to argue that Atmos is already obligated to meet the needs of consumers at the "lowest possible" gas cost.²¹ Staff strongly disagrees with this characterization of Atmos' obligation. Rather, gas utilities are obligated to use a "best cost" approach when purchasing and delivering gas to their customers. There are many cases where the Company could buy gas at an extremely low price from unreliable suppliers that may, or may not get delivered to customers. In addition, we have found that a "carrot" is a better policy maker than a "stick" and produces faster results. The Consumer Advocate's allegation that a pre-existing obligation on the part of Atmos to achieve the same gas cost results for its customers is difficult if not impossible to require in an after-the-fact audit. One component of the Proposed Settlement provides for an outside auditor to assist the TRA Staff in reviewing the results of the PBR, however this component has nothing whatsoever to do with the potential savings that Atmos may, or may not realize that will be shared with its customers. The remaining comments of the Consumer Advocate in this paragraph relating to the reasons for the TRA Staff's negotiations in this Docket are inaccurate and irrelevant.

6. Staff is uncertain as to exactly what the Consumer Advocate is arguing in Paragraph 6. There is no foundation for their argument regarding a "better math formula" that Staff can find anywhere in their objection. To the extent that Paragraph 6 furthers any of the Consumer Advocate's arguments regarding \$750,000 in savings that may accrue to Atmos, please refer to the Staff's responses to Paragraphs 4 and 5. The remaining comments of the Consumer Advocate in this paragraph are irrelevant.

7. The Consumer Advocate's comments in this Paragraph appear to be largely historical and are otherwise irrelevant to any decision in this docket.

²¹ *Objections*, p 10 (May 17, 2004).

8. The Consumer Advocate's comments in this Paragraph appear to be largely historical and are otherwise irrelevant to any decision in this docket.

9. In this Paragraph, the Consumer Advocate identifies four factors (although only three of the "factors" are actually categorized) "in reaching the goal of reducing costs to consumers" without identifying the source of these factors. However, Staff asserts that the *Settlement Agreement* accomplishes all four of these factors.

10. Staff agrees with the Consumer Advocate's statement in Paragraph 10 regarding the Company's proposed Tariff Sheet 45.1.

11. and 12. In these Paragraphs, the Consumer Advocate states that the predefined standard of performance contained in the Company's proposed Tariff Sheet 45.1 is "counterfeit" because it is the maximum FERC transportation rate. The Consumer Advocate then concludes that because the standard of performance does not rely on an established benchmark or market price for transportation services, that "real" savings cannot be measured. Staff disagrees. The FERC approved transportation rates serve as the most objective benchmark for the transportation of component of total gas costs because any negotiation that Atmos successfully makes with a pipeline will begin at these rates. In addition, in the absence of any Performance Based Ratemaking plan, the TRA would look to the published FERC transportation rates as a measure of the Company's prudence. Therefore, any transportation contract that is negotiated below these published rates will immediately result in savings for the gas customer and the incentive for Atmos to procure these savings is contained in the Proposed Settlement.

13. In this paragraph, the Consumer Advocate argues that the measurement of the savings that Atmos may realize and share in from the *Settlement Agreement* does not take into account the possible effects of other cost increases that may be incurred to obtain the savings. The

Consumer Advocate then goes into an example where gas is purchased at a higher total cost only because the transportation costs are less. However, the Consumer Advocate fails to see that just the opposite of this scenario exists today within the current PBR Plan and provides the Company with a perverse incentive to purchase gas in an uneconomical manner. For example, if transportation costs are excluded from the PBR performance calculations, Atmos could pass on to their customers relatively high transportation costs that were established in order to secure relatively low gas commodity costs and thereby earn benefits under the existing PBR formula since it relies on pure commodity costs alone. To eliminate this perverse incentive, the Proposed Settlement includes both the Company's transportation costs as well as their wholesale gas commodity costs in order to provide the proper incentives to reduce the total cost of gas from all sources.

14. In this paragraph, the Consumer Advocate argues that there should be no reward without any risk taken on by the Company. As a general principle, the TRA Staff agrees with the Consumer Advocate's position on this issue. However, this principle is irrelevant as the Consumer Advocate has applied it here since the Company does not already have a transportation risk burden outside of its responsibility to purchase gas in a prudent manner. As mentioned in Staff's response to Paragraph 13, the measure of prudence for transportation costs would be the FERC published transportation rates. There is no existing requirement for the Company to negotiate a lower rate that would be found from an after-the-fact audit. Since there is no pre-existing risk, there is also no pre-existing reward. The reward comes solely from the Company's ability to successfully negotiate a lower transportation contract with its pipeline supplier. Risk does not play a part of this negotiation and is irrelevant to the decision at hand.

15. In this paragraph, the Consumer Advocate states that the *Settlement Agreement* will not alter the future costs or behavior of the Company and therefore no there should be no sharing of the savings. However, the *Settlement Agreement* is structured in a manner such that the Company will not share in anything if there are no future savings for the customer.

16. In this paragraph, the Consumer Advocate states that the *Settlement Agreement* somehow contradicts the TRA's decision in Docket 03-00209 concerning uncollected gas costs. Since this docket concerns the procurement of gas and its related costs and Docket 03-00209 concerns how gas costs are collected from the Company's customers Staff is unable to see the clear relationship between the two issues to the matter at hand and therefore asserts that the Consumer Advocate' arguments concerning Docket 03-00209 are unpersuasive regarding the issues presented for decision in this docket.


17. In this paragraph, the Consumer Advocate requests a "detailed audit and review of the current facts." It is not clear from this paragraph what should be audited and what current "facts" need to be reviewed. The Consumer Advocate has had ample opportunity for discovery and should be required to file a motion identifying precisely any additional discovery it seeks and the reasons it has not sought such information before now. The Proposed Settlement provides for a detailed audit of the Company's amended incentive plan, utilizing a consultant with the experience and expertise needed to assist Staff in its review of current issues related to the natural gas market.

III. CONCLUSION

Based on the foregoing, the Consumer Advocate's *Motion for Relief* should be denied. The Consumer Advocate's *Objections* deter unfounded and Staff therefore requests that, at the conclusion of the hearing of this matter, the *Settlement Agreement* be approved.

Respectfully submitted,

ENERGY AND WATER DIVISION
OF THE TENNESSEE REGULATORY AUTHORITY



Randal L. Gilliam
Attorney for Staff
460 James Robertson Pkwy.
Nashville, TN 37243
Randal.Gilliam@state.tn.us
(615) 741-3191 ext. 212

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via hand delivery or U.S. Mail, postage prepaid, upon the persons listed below this ^{2nd} day of May, 2004.

Russell T. Perkins
Timothy C. Phillips
Shilina B. Chatterjee
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, TN 37202

Joe A. Conner
Misty Smith Kelley
1800 Republic Centre
633 Chestnut Street
Chattanooga, TN 37450



EXHIBIT A

May 4, 2004

Via Facsimile

Randal L. Gilliam, Esquire
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Docket 01-00704, United Cities Gas/Atmos Incentive Plan Account Audit

Dear Mr. Gilliam

I have your objections. How about answering our discovery as soon as possible in light of your reasons for asserting that the proposed settlement should be approved?

If there is disagreement about the standard, this can be cleared up later. Thanks

Sincerely,

Russell T. Perkins
Deputy Attorney General
(615)741-1376

cc Joe Connors, Esq. (via facsimile)

75031